IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

-

WRIT PETITION NO : 13057 of 2004

Between:

N. Appa Rao S/o. Narayana Murthy,
Aged about 46 years, Occu: Line Inspector,

APEPDC. Ltd., R/o. Near RTC Bus Complex, Narsipatnam,

Visakhapatnam District.

..... PETITIONER

AND

1. The A.P. Eastern Power Distribution Company Limited.,

Dabagardens, Visakhapatnam-20, rep. by its

Chairman & Managing Director.
2. The Divisional Electrical Engineer, Operation, APEPDC. Ltd.,

Anakapalli.
3. The Divisional Engineer, Enquiries, APEPDC Ltd.,

Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the enquiry report
dt. 26.12.2003 submitted by the 3rd respondent and the consequential Memo No. DEO.AKP.AD.U.D.No.3 of 2004, dt. 20.1.2004 issued by the 2nd respondent, as arbitrary and violative of principles of natural justice and to set aside the same and

consequently direct the Respondents to conduct the De-nova enquiry by giving due opportunity to the petitioner and following the principles of natural justice in the interest of justice.

Counsel for the Petitioner: MR.G.RAMA GOPAL

Counsel for the Respondent No.1 to 3: MR.M.SUBBA RAO, STANDING COUNSEL FOR APEPDC.

The Court, at the stage of admission, made the following:

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O R D E R:

The petitioner is working as a Lineman. A disciplinary enquiry was initiated against him on the ground that he gave illegal electricity connections to several consumers. The petitioner participated in the enquiry. But, he contends that the statements of the witnesses were not recorded in his presence and he was asked to remain outside the room in which the enquiry was conducted. After receipt of the enquiry report, the disciplinary authority issued a final show cause notice on 20-01-2004 asking him to show cause as to why he shall not be dismissed from service. The petitioner contends that he submitted an explanation to the said show cause notice and the matter is pending for passing final orders before the disciplinary authority. During the pendency of the matter, the petitioner approached this Court through this writ petition seeking to declare that the enquiry report dated 26-12-2003 submitted by the third respondent and the consequential memo dated 20-01-2004 (final show cause notice), as arbitrary and violative of principles of natural justice.

The enquiry report was submitted by the Enquiry Officer on 26-12-2003. The petitioner did not submit any representation or application to the disciplinary authority whether he was denied any

opportunity to participate in the enquiry. It is open to the petitioner to give the details regarding the circumstances under which he was denied the opportunity through an explanation to the final show cause notice. If the disciplinary authority fails to take into consideration those circumstances placed by the petitioner and if it passes the final order ignoring those circumstances, it is open to the petitioner to question the legality of the final order before the appropriate forum.

The learned counsel for the petitioner submitted that the Enquiry officer himself played the role of a Prosecutor by putting questions to the witnesses and eliciting the answers from them and such conduct of the Enquiry Officer caused any amount of prejudice to the petitioner and the learned counsel for the petitioner also relied on a Judgment of the Bombay High Court in *MURALIDHAR SITARAM RANE VS. STATE OF MAHARASHTRA* wherein the Bombay High Court held that when an Enquiry Officer assumed the role of cross-examiner in the presence of the Presenting Officer by questioning the delinquent at great length and in great detail, the findings of the Enquiry Officer are vitiated since the Enquiry Officer assumed the role of Prosecutor and Judge.

In the present case, there is no Presenting Officer. Unless the Enquiry Officer elicits the information from the witness, it is not possible to get necessary particulars relating to the charge. Therefore, the principle laid down in the above decision is not applicable to the facts of this case. The petitioner, while prosecuting the matter before the disciplinary authority, cannot run a parallel proceeding. Therefore, this writ petition at this premature stage, cannot be maintained.

The writ petition is accordingly dismissed. The petitioner has every liberty to challenge the final order, if he is advised to question the same, on the ground of procedural irregularity or violation of principles of natural justice. It is needless to say that the disciplinary authority would take into consideration all the pleas taken by the

petitioner in his explanation to the final show cause notice and pass appropriate orders according to the Rules.

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28-10-2004.

Lrkm.

To

1. The Chairman & Managing Director, A.P. Eastern Power Distribution

Company Limited, Dabagardens, Visakhapatnam-20.

2. The Divisional Electrical Engineer, Operation, APEPDC. Ltd.,

Anakapalli.

3. The Divisional Engineer, Enquiries, APEPDC Ltd.,

Visakhapatnam.

4. 2 CD copies.